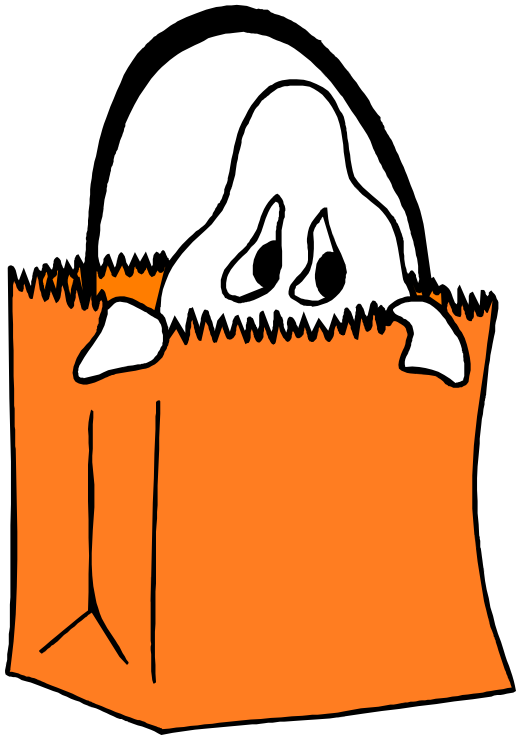
NO FEAR



No Fear Act: Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002

You are protected – do you know your rights and the law?

What's Here…

- Introduction
- Overview
- Policy
- Purpose of the Act
- Your Rights
- EEO Statutes
- Discrimination & Complaints Pre-Complaint Process
- Formal Complaint Process
- Other Circumstances
- Who to Contact
- Whistleblower Protection Act
- Protected Disclosures
- Whistleblower Disclosures
- Office of Special Counsel
- Responsibilities
- Merit System Principles
- 12 Prohibited Practices
- Retaliation
- Applicable Regulations
- Elements of Reprisal Claim
- Protected Activity
- Disciplinary Actions
- Additional Information
- That's All…

Introduction,
Page 1 of 3

- Numerous federal laws, agency regulations and organizational policies prohibit discrimination and protect our employees
- The government provides SAFE procedures for employees to report instances of prohibited acts, and gross waste, fraud, or abuse.

Introduction,
Page 2 of 3

- Federal law and other regulations prohibit retaliation against employees who exercise their rights and responsibilities to report violations of these laws
- This training nugget summarizes these requirements in accordance with the:
  - Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002
  - Known as the No Fear Act

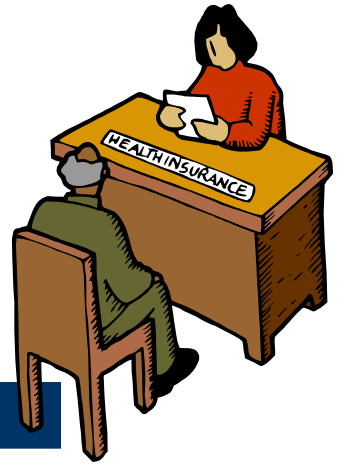
Introduction,
Page 3 of 3

- All NAF employees are covered by these laws, regulations and policies
- All NAF employees must receive initial and recurring training regarding these laws, regulations and policies
- This training nugget is provided to assist HR Offices, managers and supervisors in ensuring all NAF employees are aware

Overview

- Title: Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (effective 10/01/03)
- Three titles:
  - Title I – General Provisions
  - Title II – Federal Employee Discrimination and Retaliation
  - Title III – EEO Complaint Data Disclosure

Policy, Page 1 of 2



- A Federal agency may not discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation.

Policy, Page 2 of 2

- Discrimination on these bases is prohibited by one or more of the following statutes:
  - 5 U.S.C. 2302(b) (1),
  - 29 U.S.C. 206(d),
  - 29 U.S.C. 631,
  - 29 U.S.C. 633a,
  - 29 U.S.C. 791 and
  - 42 U.S.C. 2000e-16

Purpose of the No Fear Act

- The Act requires that “Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.”
- The Act also requires that DON inform current employees, former employees and applicants for employment, of the rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws.

Your Rights

- Existing Rights Unchanged
  - Pursuant to section 205 of the No FEAR Act, neither the Act nor any notice issued in compliance with the Act, creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

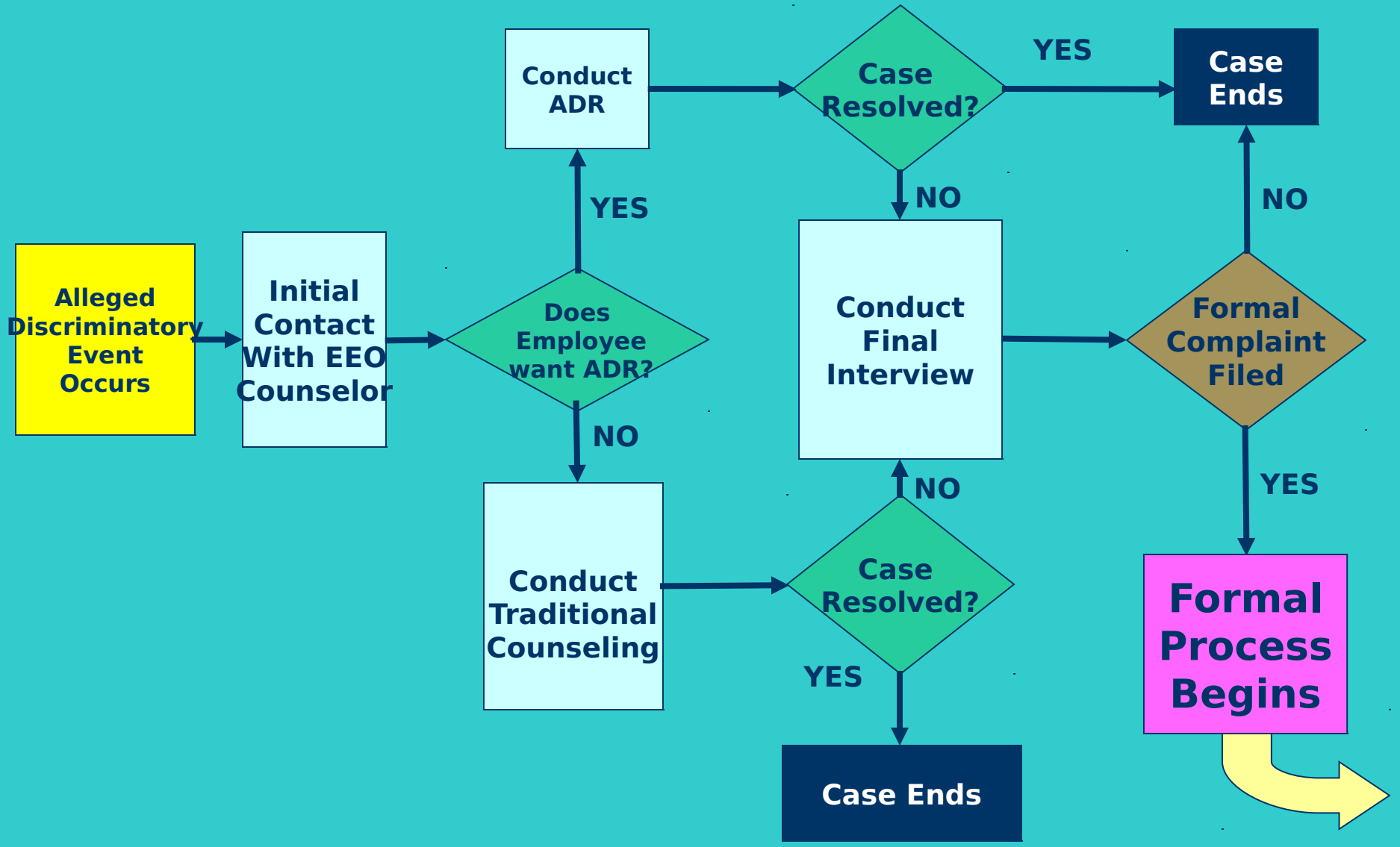
EEO Statutes

- Title VII of the Civil Rights Act of 1964
  - Prohibits discrimination based on race, color, religion, sex, and national origin.
- Age Discrimination in Employment Act of 1967
  - Prohibits discrimination of the basis of age (40 years and older).
- The Rehabilitation Act of 1973
  - Prohibits discrimination the basis of mental and physical disability.
- Equal Pay Act of 1963
  - Prohibits sex-based wage discrimination.
- All statutes prohibit reprisal or retaliation against individuals exercising their rights under the statutes.

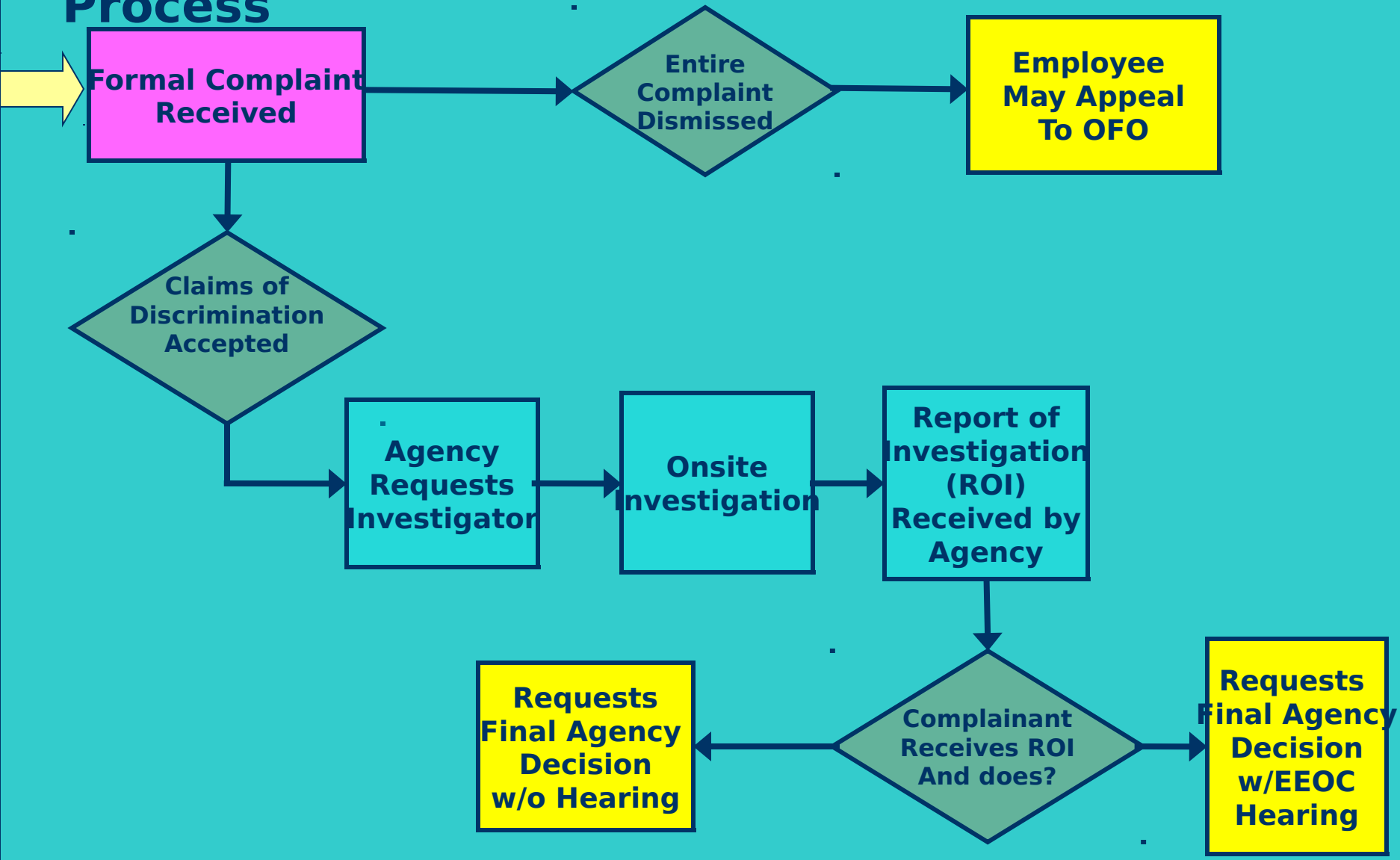
EEO Discrimination and Complaints

- If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must:
  - Contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action; or,
  - In the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency.
    See, 29 CFR 1614.
  - Every individual alleging discrimination must first go through the pre-complaint or counseling phase of the DON EEO discrimination complaint process. (See next slide)

Pre-Complaint Process



Formal Complaint Process


Formal Complaint Received
Entire Complaint Dismissed
Employee May Appeal To OFO
Claims of Discrimination Accepted
Agency Requests Investigator
Onsite Investigation
Report of Investigation (ROI) Received by Agency
Complainant Receives ROI And does?
Requests Final Agency Decision w/o Hearing
Requests Final Agency Decision w/EEOC Hearing

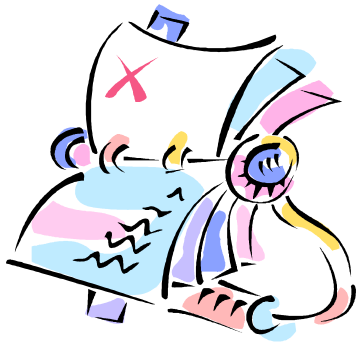
Other Circumstances,
Page 1 of 2

- If you believe that you have been the victim of unlawful discrimination on the basis of age, you may either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action.

Other Circumstances,
Page 2 of 2

- If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Who To Contact



- Local EEO Office
  - Contact information can be found on official bulletin boards.
- U.S. Office of Special Counsel

  1730 M Street NW., Suite 218,

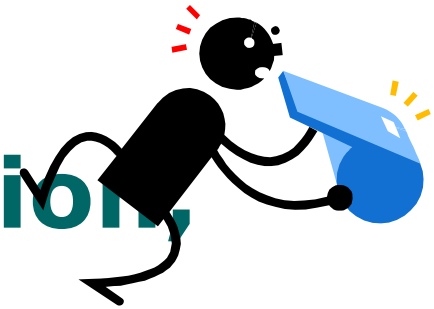
  Washington, DC 20036-4505

  (202) 254-3640

  (800) 572-2249

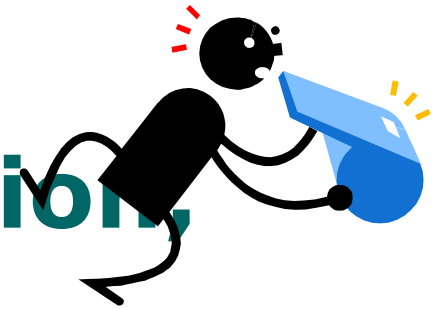
  OSC Web site — http://www.osc.gov
  - Hearing and Speech Disabled: Federal Relay Service 1-800-877-8339

Whistleblower Protection
Page 1 of 3



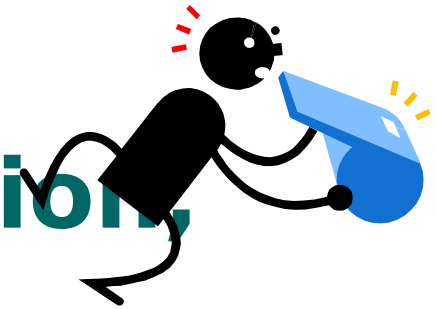
- A Federal employee with authority to take, direct others to take, recommend or approve any Personnel Action must not use that authority to take or fail to take, or threaten to take or fail to take, a Personnel Action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence:
  - violations of law, rule or regulation;
  - gross mismanagement;
  - gross waste of funds;
  - an abuse of authority;
  - or a substantial and specific danger to public health or safety,

Whistleblower Protection
Page 2 of 3



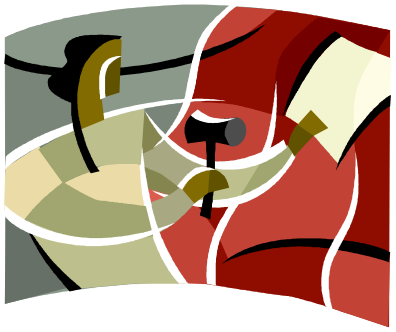
- Unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Whistleblower Protection
Page 3 of 3



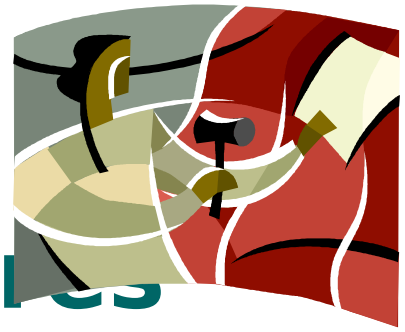
- Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8).
  - If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel

Protected Disclosures



- Violation of Law, Rule or Regulation
- Substantial and specific danger to public health or safety
- Gross Waste of Funds
  - More than a debatable expenditure.
- Gross Mismanagement
  - An action that creates a risk of significant adverse impact on the accomplishment of an Agency's mission.
- Abuse of Authority
  - An arbitrary or capricious exercise of power that injures another, or benefits the abuser or others.

Whistleblower Disclosures



- No Requirement that employee go through Chain of Command.
- Whistleblower's personal motivation does not affect reasonableness of a disclosure.
- Employee or applicant is protected if employer mistakenly believes he or she is a whistleblower.
- Disclosure is not protected (unless made to the Special Counsel or Inspector General), where the disclosure is:
  - Prohibited by law, or
  - Required by Executive Order to be secret for National Security or Foreign Affairs reasons.

Office of Special Counsel (OCS), Page 1 of 2

- The Office of Special Counsel (OSC) provides a secure channel through which current and former federal employees and applicants may make confidential disclosures.
- OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the conditions previously listed has been disclosed.

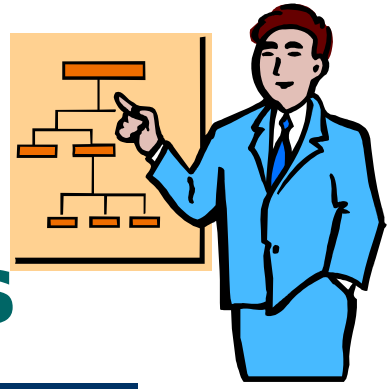
Office of Special Counsel (OSC), Page 2 of 2

- If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.
- To make a disclosure, contact the U.S. Office of Special Counsel.

Responsibilities

- Agency Heads, and officials with delegated personnel management authority are responsible for:
  - Preventing prohibited personnel practices
  - Complying with and enforcing civil service laws, rules and regulations
  - Ensuring that employees are informed of their rights and remedies

Merit System Principles



- Recruit, select, and advance on the basis of merit after fair and open competition
- Treat employees and applicants fairly and equitably
- Provide equal pay for equal work; reward excellent performance
- Maintain high standards of integrity, conduct and concern for the public interest
- Use human resources effectively and efficiently
- Retain or separate employees on the basis of their performance
- Provide employees with effective training and education
- Protect employees from reprisal for lawful disclosures

12 Prohibited Personnel Practices

- Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may ***not***:
  - Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
  - Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;

12 Prohibited Personnel Practices

- Coerce the political activity of any person;
- Deceive or willfully obstruct anyone from competing for employment;
- Influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
- Give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
- Engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives);

12 Prohibited Personnel Practices

- Engage in reprisal for whistle-blowing
- Take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;

12 Prohibited Personnel Practices

- Discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
- Take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and
- Take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301.

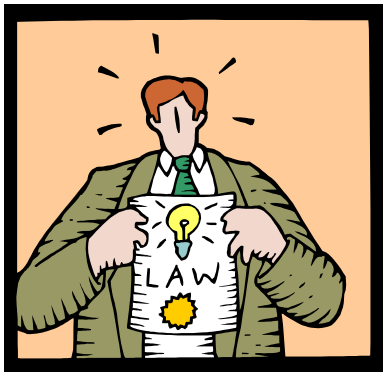
Retaliation for Engaging in Protected Activity, Page 1 of 2

- A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above.

Retaliation for Engaging in Protected Activity, Page 2 of 2

- If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Applicable Regulations

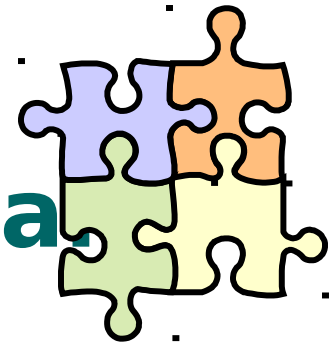


- **<u>29 CFR §1614.101(b) states</u>:**

  "No person shall be subjected to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), or the Rehabilitation Act (Rehab Act), or for participating in any stage of the administrative or judicial proceedings under those statutes."

4 Elements of Reprisal Cla

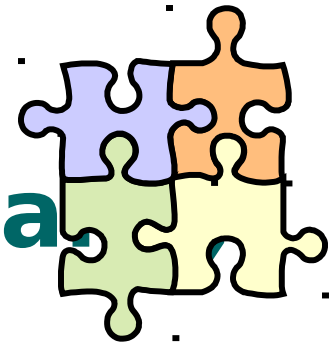
Page 1 of 2



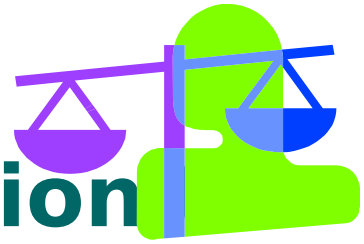
- **First Element:**
  - Individual expressed opposition to discriminatory practice; or,
  - Individual participated in the discrimination complaint process
- **Second Element**:
  - Agency (Management) aware of protected activity.
  - The individual who the complainant alleges retaliated against them must have knowledge of their protected activity.

4 Elements of Reprisal Cla

Page 2 of 2

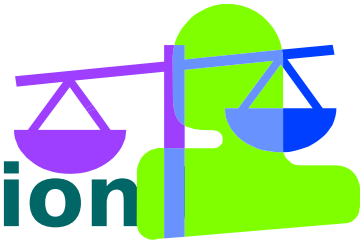


- **Third Element**:
  - Agency must have taken an adverse action after the complainant engaged in the protected activity
  - Examples of Adverse Action: Denial of promotion, award, position; disciplinary action; negative evaluation or, harassment.
- **Fourth Element:**
  - Complainant must demonstrate a “Causal Connection” between the adverse action and the protected activity.



Protected Activity: Opposition to Discriminatory Practice, Page 1 of 2

- The anti-retaliation provisions make it unlawful to discriminate against an individual because s/he has opposed any practice made unlawful by Title VII, the ADEA, the EPA, or the Rehab Act.
- A complaint amounts to protected opposition only if the individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination.



Protected Activity: Opposition Discriminatory Practice, Page 2 of 2

- The opposition clause does not require the person be correct in their belief that the agency's employment practice they opposed actually violated Title VII, the ADEA, the EPA, and/or the Rehab Act.
- The opposition clause protects the individual provided that they had a good faith and reasonable belief that a violation of the EEO statutes had or was occurring.

Protected Activity: Participation in the EEO Practice, Page 1 of 2

- Title VII, the ADEA, the EPA, and the Rehab Act make it unlawful to discriminate against any individual because s/he has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under any of the anti-discrimination statutes.
- While the opposition clause applies only to those who protest practices that they reasonably and in good faith believe are unlawful, the participation clause applies to all individuals who participate in the EEO complaints process.

Protected Activity: Participation in the EEO Practice, Page 2 of 2

- An agency can be found liable for retaliating against an individual for filing an EEO complaint regardless of the merits or reasonableness of the original complaint.

Disciplinary Actions
Page 1 of 2

- Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal.
- If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation.

Disciplinary Actions
Page 2 of 2

- Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

- **For further information regarding the No FEAR Act regulations refer to:**
  - 5 CFR 724
  - Servicing EEO Office
  - Website: http://www.donhr.navy.mil/NoFearAct.asp.
- **Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at:**
  - EEOC Website: http://www.eeoc.gov
  - OSC Website: http://www.osc.gov

That’s all for now…

You are protected – do you know the law?

Suggestions and requests to:

ommander, Navy Installations Command (CNIC)
F&FR Training Branch, N947
Millington, TN 38055-6540

Com: (901) 874-6727 DSN: 882-6727
helen.turner1@navy.mil

Certificate Submission

- On the next slide, please enter your name.
- To Print your certificate
  - On the menu bar select File, then Print. The print dialog box will display. If you wish to submit your certificate electronically, In the Printer Name field, select Adobe PDF
  - In the center of the dialog box, is the Print Range Section.
  - Select “Current Slide”, then Select “OK”
- To submit your certificate to _____
  - Fax your certificate to (XXX) XXX-XXXX (DSN XXX).
  - Email your certificate to Deliver your certificate to:

    _____
- This training must be completed by _____

Certificate of Completion

Enter your name here

Completed

No FEAR Act:

Notification and Federal Employee
Anti-Discrimination and Retaliation Act of 2002

Prepared by the Naval Office of EEO Complaints
Management & Adjudication

On

September 13, 2016